

Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of December 6, 2005

Approved December 27, 2005

Members present: Chairman Rick Butler, Co-chairman Jack Baker, Doug Andrew, Brett Hunter, Scott Boisvert, and Secretary Meredith Bolduc.

Mr. Butler called the meeting to order at 7 p.m. then called the roll.

MINUTES

Mr. Baker made the motion to accept the October 25, 2005 meeting minutes as written.
Motion seconded by Mr. Andrew with unanimous favorable vote.

Mr. Baker made the motion to accept the November 29, 2005 meeting minutes as written.
Motion seconded by Mr. Andrew with unanimous favorable vote.

It was agreed to go directly to the scheduled Public Hearing and take care of any Board business when the Hearing was finished.

Case # 05-013
Jeanne & Frederick Ahern
Map 2 Lot 077-02-15

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

Present: Owner Frederick Ahern, Abutter Mark Daigle, Abutters Debra and Santo Messina

Mr. Butler opened this Public Hearing at 7:05 pm and called the roll.

Mr. Butler explained that this is a continuance of the November 29, 2005 portion of this Public Hearing.

It was noted that the certified return has been received from abutter Nathan Strout so now all returns are in. Also a comment sheet was received from the Fire Chief stating that *"I have no comment on the pool. Is good for fire protection."*

Mr. Butler reiterated from the November 29, 2005 portion of this Public Hearing that the violation of the sideline setback requirements relative to the existing pool and associated pump house, done 17 years ago, was discovered

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on September 2, 2005 by land surveyor James Lavelle as a result of a fence company recommending that the lot be marked by a land surveyor for placement accuracy; said fence requested by the applicant's homeowner's insurance company.

Mr. Ahern presented a plot plan drawn and certified by James M. Lavelle Associates.

It was noted that Mrs. Bolduc had received an e-mail request from abutter Debra Messina for information relative to a certified plot plan and copies of the minutes and other documents that are public information. Mrs. Bolduc replied that it is all public information and available if she needed copies. Mrs. Messina also pointed out that the pump house building is not 6' x 8' but actually 8' x 16'. The e-mail document has been made part of the record.

Mr. Andrew, Mr. Hunter, Mr. Boisvert and Mr. Baker were present at the site visit on Sunday December 4, 2005 and found that the pump house is 8' x 16' and not 6' x 8' as originally thought. Mr. Hunter's notes on the comment sheet relative to the site visit included the information that they located the shed and with the property markers found the right back edge of the shed to be in line of sight of these markers and 1 foot of the shed overhang seems to extend over the property line. Items inside of the shed would not prevent it from being moved 6" or less. Mr. Boisvert's notes on the comment sheet were that the abutting property house is clearly more than 40' from the property line and is not visible from the pool area. There was a discussion relative to whether the building could be moved to make for more setback. Mr. Boisvert stated that due to the plumbing inside the building it would be difficult to move. Mr. Hunter stated that it has a raised floor so it could be turned a little. Mr. Ahern added that he had talked to his neighbor Mark Daigle about moving it. Mr. Daigle stated that the building is already pushed as far as it can be without needing to redo piping. Mr. Ahern stated that another problem is that the chimney goes through the roof and the sand filter is already hard up against the wall. He feels the only reasonable way gain more setback is to cut off the corner of the building and he is willing to do that. That would give him a setback of one (1) foot.

Mr. Butler asked Mr. & Mrs. Messina if they are agreeable to the one (1) foot setback and they indicated that they were.

The four points of criteria that must be met for an Equitable Waiver to be approved as well as Article IV Section 1 of the Fremont Zoning Ordinance were read at the November 29, 2005 portion of this Public Hearing.

Mr. Ahern addressed the four elements of an Equitable Waiver of Dimensional Requirements (in italics) and the Board voted as follows:

(a) The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value; *The placement error was not noticed until September 2, 2005 when the land surveyor was retained to mark the lot line on lot #15. We were totally unaware that the placement of the in-ground gunite pool and accessory shed was incorrect and it must be the result of a legitimate mistake by the pool company.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Hunter	Yes

Mr. Butler	Yes
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(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner, owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority; *This was an honest error.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Hunter	Yes
Mr. Butler	Yes

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; *The nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area. As shown by the requested photo prints, the area directly behind the full length of the setback involved is a nicely wooded area. Noise is not a factor because of the considerable and wooded distance between the single dwelling homes.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Hunter	Abstained
Mr. Butler	Yes

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. *The correction cost to relocate the in-ground pool and filter/pump enclosure, as well as, the enormous cost to reconstruct landscaping and rebuild supporting walls would far outweigh any public benefit derived by doing so. The public benefit to moving these items a few feet to comply with the setbacks is of little or no benefit at all and the cost in doing so is cost prohibitive and beyond our ability to do.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Hunter	Abstained
Mr. Butler	Yes

Mr. Baker made the motion, based on the information presented and the results of the Boards vote on the four points of criteria that must be met for approval of an Equitable Waiver, that the Fremont Zoning Board of

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Adjustment approve the request of Jeanne P. and Frederick E. Ahern for an Equitable Waiver of Dimensional Requirements from Article IV Section 1 of the Fremont Zoning Ordinance, for property located at 16 Hawthorne

Drive, Map 2 Lot 077-02-15, to allow an existing in-ground pool and related pump enclosure building to continue to be located in it's current location closer than twenty (20) feet, and as close as one (1) foot, from the side property line provided that a portion of said pump enclosure building be removed to so that there is no encroachment closer than one (1) foot from the side property line.

Motion seconded by Mr. Boisvert with unanimous favorable vote.

Mr. Ahern was reminded that anyone party to the action has 30 days to appeal this decision.

Mr. Boisvert made the motion to close this Public Hearing at 7:40 pm.

Motion seconded by Mr. Baker with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, Clerk

cc: SO, TC, PB, CC, RA, BI, HO, PD, FD
ZBA files